

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

RICHARD FLOWERS,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 10-07-752</u>
v.	:	Probable Cause Determination
	:	and Order of Dismissal
AMALGAMATED TRANSIT UNION, LOCAL 842,	:	
	:	
Respondent.	:	

Appearances

Richard Flowers, Pro Se

John R. Bielski, Esq., Williams Willig & Davidson, for ATU Local 842

BACKGROUND

The Amalgamated Transit Union, AFL-CIO, CLC ("ATU"), is an employee organization within the meaning of §1302(i) of the Public Employment Relations Act, (19 Del.C. Chapter 13) ("PERA"). Through its affiliated Local 842, the ATU is the exclusive bargaining representative of a bargaining unit of Delaware Transit Corporation employees within the meaning of §1302(j) of the PERA.

The Delaware Transit Corporation ("DTC") is an agency of the State and a public employer within the meaning of 19 Del.C. 1302(p).

Charging Party, Richard Flowers ("Charging Party"), is employed by DTC and is a public employee within the meaning of 19 Del.C. §1302(o). Charging Party is a member of the bargaining unit represented by the ATU.

On or about July 6, 2010, Charging Party filed an unfair labor practice charge alleging that DTC violated 19 Del.C. §1301(1), (2), (3), §1304(a) and §1307(b)(1), (b)(3), and (b)(6), which provide:

- §1301 It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:
- (1) Granting to public employees the right of organization and representation;
 - (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and

- §1303 Public employees shall have the right to:
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this

§1304. Employee organization as exclusive representative.

- (a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

§1307(b) It is unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its

responsibility to regulate the conduct of collective bargaining under this chapter

- (6) Hinder or prevent, by threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment by any person, or interfere with the entrance to or egress from any place of employment.

Charging Party alleges that as of the date of the filing of this unfair labor practice charge he has been unable to work since June 9, 2009, due to a work-related injury. Because he is not earning wages from DTC, no union dues have been withheld and transmitted to the ATU during the period of his leave of absence. Charging Party asserts he is financially unable to pay dues plus arrearages. His membership in the ATU has been suspended and he alleges he is being denied the rights and privileges of other ATU members, including being prohibited from attending Union meetings. Charging Party claims he was told that he cannot be reinstated until his dues are current.

Charging Party further asserts that employees who were in arrears in the payment of Union dues arrearages under similar circumstances in the past were not required to pay dues or arrearages until they returned to work and in some cases were not required to pay arrearages at all. Charging Party alleges that he is being treated differently because he has angered Union officials by filing PERB charges requiring Union representatives to appear in order to protect union interests and incur expenses with regard, thereto.

On or about July 15, 2010, ATU filed its Answer denying the material allegations set forth the Charge. The ATU Constitution and Bylaws, Section 21.11 "Membership," states

Where any member is in arrears for dues, fines and assessments, and such arrearage has reached the last day of

the second (2nd) month, the member shall be reported to the LU as having suspended him or herself from membership by the non-payment of dues, fines and assessments...

The ATU alleges that Charging Party has failed to pay Union dues for years, resulting in his being suspended from membership in 2006 or 2007. On or about July 27, 2009, the Local President advised Charging Party by letter:

Enclosed are the two documents that you requested from the Union.

1. The DART CONTRIBUTORY PENSION PLAN
2. 842 LOCAL BY-LAWS

I hope that this satisfies your request.

Again as we have said in the past you are free to make an appointment with the Financial Secretary/Treasurer (Joe Frank) to view the financial report paperwork. This will also serve as a reminder that while you are out on sick leave, that you are responsible for the payment of your Pension Contribution and Union Dues. Our records indicate that you are in the arrears of \$853.44 for Union Dues for the years of 2006-2008.

2006-2007	\$246.00
2008	\$606.84

As you know, the International Constitution and General Laws sections 21.9-21.11 talks about dues and arrears. Since you are in arrears of almost 1 1/2 years you have been suspended until your dues are caught up. In the past we solicited a request for repayment on your own terms, now we are going to make to take the arrears out when you return to work. You can make arrangements with the Financial Secretary if you want other options.

The ATU further alleges there is no independent unfair labor practice provided for by the PERA except for those set forth in §1307(a) and (b), of the Act.

Under "New Matter" Respondent cites the aforementioned provision from the Union's Constitution and Bylaws, Charging Party's long-term dues arrearage and the clear notice provided to Charging Party by the Local Union President in July, 2009, of his suspended membership status.

On July 27, 2010, Charging Party filed a Reply to the Union's New Matter, denying all material allegations contained therein. He asserts that while the Constitution contains the provision cited by the Union, it has not been applied in the past to other members who are in arrears while out on sick leave.

DISCUSSION

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board shall decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, Del. PERB Probable Cause Determination, ULP 04-10-453, v. PERB 3179, 3182 (2004).

The Charging Party must allege facts in the complaint with sufficient specificity so as to, first, allow the Respondent to provide an appropriate answer and second, to provide facts on which PERB can conclude there is a sufficient basis for the charge. The Charge must also explicitly link the factual allegations to the “specific provision of the statute alleged to have been violated.” DE PERB Rule 5.2. The initial burden rests on the Charging Party to allege facts that support the charge that §1307 of the PERA has been violated. *Sonja Taylor-Bray v. AFSCME Local 2004*, ULP No. 10-01-727, Probable Cause Determination and Order of Dismissal, VII PERB 4633, 4635 (2010).

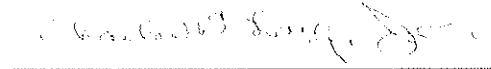
The issue(s) raised in the Charge involve neither the Union’s duty to represent all members of the bargaining unit without discrimination nor terms and conditions of employment. Charging Party’s concern involves a matter of internal union business controlled exclusively by the Union’s Constitution and Bylaws. Any issue Charging Party has with regard to the application of Section 21.11 contained therein, or with the payment of Union dues and/or membership status generally are within the exclusive jurisdiction of the Union through its internal administrative procedures, and his recourse must be through the union’s internal complaint procedures.

DETERMINATION

Considered in a light most favorable to Charging Party, the pleadings fail to establish probable cause to believe that an unfair labor practice, may have occurred. The Charge is hereby dismissed in that it fails to allege facts sufficient to support a claim that 19 Del.C. §1301(1), (2), (3), §1304(a) and §1307(b)(1), (b)(3), and (b)(6) was violated, as alleged.

IT IS SO ORDERED.

Date: September 3, 2010



CHARLES D. LONG, JR.,
Hearing Officer
Del. Public Employment Relations Bd.